



Breakthrough Business Solutions

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This document is for informational purposes only and should not be construed as legal advice or opinion.



For Federal Government Contractors

The Freedom of Information Act (FOIA) provides that any person has a right to obtain access to Federal agency records—except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

A FOIA request can be made for any agency record, including copies of Federal contracts, modifications and often, by incorporation, the winning proposal. Information pertaining to the privacy of individuals and the provision of information, which constitutes privileged, proprietary, trade secrets, or confidential data, are exempted. Expect documents regarding contracts and proposals that you receive to have large amounts of text redacted.

Why bother?

FOIAs are effective for Federal contractors to research government programs and activities, as well as to learn about your competition. SJ&A recommends assigning an individual within your company to periodically submit FOIA requests concerning a program or other contractors, and analyze the documents received. For example, if you are considering bidding on a specific procurement, request: copies of the current contract and modifications to it, correspondence between the agency and the incumbent contractor, and the incumbent's proposal. Though the documents may be heavily redacted, it can still provide valuable information—even in the table of contents of the proposal can be of value. Of note, some agencies are more lenient (or less careful) than others when it comes to redacting data.

Be Specific!

A complete, well-written request may help avoid delays and further correspondence with a government agency. A FOIA request must “reasonably describe” the records sought – the more detailed the description, the better. Providing the specific contract number, name, and a date range are good for narrowing a document search. The request should mention that a reply is expected within the statutory timeframe, which is 20 days.

What Can I Expect After a Request Is Submitted? How much will it cost?

The initial reply from the government may not be the requested documents, but a “determination” of whether it will comply with the request, a description of their process, and an expected timeframe. The reply may also ask about production fees. For this reason, SJ&A suggests that you state a dollar limit in your initial submission, and request that the agency contact you if the estimated fees to perform the records search and copying will exceed the stated amount. Be aware that you may be charged for search time even if no documents are found or released, and an agency may request payment in advance

where the estimated cost exceeds \$250. Search and review fees can run from \$8.00 to \$45.00 per hour; duplication fees can run from \$.10 to \$.35 per page.

Where or To Whom Should I Submit the FOIA Request?

There is no central office that processes FOIA requests for the government. Each Federal department and agency responds to requests for its own records. Locating an agency's FOIA office through the Internet is usually easy. Most Federal agencies now accept FOIA requests electronically, including by web form, e-mail or fax. The following link provides details about the methods of making a request at each agency and any specific requirements for seeking certain records.

<http://www.foia.gov/report-makerequest.html>

In addition, there are tools such as the Automatic FOIA Letter Generator done by the Reporters Committee that can be helpful in formulating your request:

http://www.rcfp.org/foia?op=show_form&type=fed_request&state=

SJ&A recommends submitting FOIA requests under the cover of a third party to avoid release of your company name with regard to the request in the marketplace.

How Long Do I Have to Wait?

FOIA responses take time—sometimes even years to complete. Do not wait until a few weeks before a proposal is due to file a request for documents that you believe would be helpful to your proposal. Instead, consider FOIA requests to be an ongoing part of your long-term marketing and information-gathering strategies. Although law mandates a timely response, many agencies are overburdened and do not complete it within the 20-day range. On average, expect a reply in about 3-6 weeks.

What Else Should I Do?

Guard *your* proprietary data from improper release under FOIA. For that reason, SJ&A suggests that you periodically *FOIA yourself* through a third party to see if the agency follows proper procedures and contacts the company regarding the FOIA request. You also may request access to the FOIA logs of government agencies to determine which competitors are requesting documents (and the identity of the documents) concerning your company.

If an agency receives a FOIA request for a document that contains your company's proprietary data, the agency should notify you and provide you with an opportunity to comment on whether it is proper to release the specific document(s), or redactions of them. If you receive such a notification, we recommend that you cooperate with the agency. Indeed, often the best course of action is to make it easy for the FOIA office by providing it with a redacted version of the documents that it can release. An important note: make sure that no one can read through the redactions—use a black Sharpie!

For more information about FOIAs, marketing, capture or proposal support and training, contact SJ&A.

